

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ENRIQUE AKIL AL-AMIN DIAZ, #1249219 §

VS. § CIVIL ACTION NO. 6:07cv153

DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus concerning a prison disciplinary proceeding should be dismissed. The Petitioner has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit.

The Petitioner alleged in his objections that the Magistrate Judge abused her discretion in recommending the dismissal of his habeas petition when he stated a valid Eighth Amendment cruel and unusual punishment claim. The basic rule in this Circuit is that a petition for a writ of habeas corpus is the proper vehicle for challenging the fact or duration of a prisoner's confinement while a civil rights lawsuit is the proper vehicle for challenging unconstitutional conditions of confinement. *Jackson v. Torres*, 720 F.2d 877, 879 (5th Cir. 1983); *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997). The Report and Recommendation correctly noted that the disciplinary proceeding being challenged did not involve a protected liberty interest, thus habeas relief was unavailable. To the extent that the Petitioner is claiming that he was subjected to cruel and unusual punishment, his

remedy is in the nature of a civil rights lawsuit. The Petitioner's attempt to raise civil rights issues in a habeas corpus proceeding lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. The Petitioner is free to file a civil rights lawsuit about any conditions of confinement claim he may have involving the facts of this lawsuit. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 17th day of July, 2007.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE